## REMARKS

This amendment is responsive to the Office Action dated December 2, 2004. Applicant has amended claims 1, 7, 9, 80, 85, 91, 94, 98, 102-104 and 108, and cancelled claims 2, 86, 95 and 105. Claims 10-14 and 21-73 have been withdrawn. Claims 1, 3-9 and 80-85, 87-94, 96-104 and 106-111 are now pending.

### Claim Rejections Under 35 U.S.C. § 112

In the Office Action, the Examiner rejected claims 1-9 and 80-93, and 104-111 under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Applicant has amended claims 1, 85, 91 and 104 for purposes of clarification. Applicant submits that the claims, as amended, particularly point out and distinctly claim the subject matter, as required by 35 U.S.C. 112, second paragraph.

### Claim Rejections Under 35 U.S.C. § 103

In the Office Action, the Examiner rejected claims 1-9 and 80-111 under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,593,426 to Morgan et al. (Morgan). Applicant respectfully traverses these rejections to the extent such rejections may be considered applicable to the claims as amended. The applied references fail to disclose or suggest the inventions defined by Applicant's claims, and provide no teaching that would have suggested the desirability of modification to arrive at the claimed invention.

For example, Morgan fails to disclose or suggest a system comprising a two-way communication network that includes a point-of-presence, receives a communication from a remote monitoring service via the point-of-presence and a data network, sends a communication to a portable defibrillator in response to receiving the communication from the remote monitoring service, receives a return communication including a status assessment from the portable defibrillator, and provides the status assessment to the remote monitoring service via the data network, as required by independent claim 1 as amended. Morgan also fails to disclose or suggest a system comprising a two-way communication network that includes a point-of-presence, receives a communication that includes a status assessment from a portable



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defibrillator, and provides the status assessment to a remote monitoring service via the point-of-presence and a data network, as required by independent claim 85 as amended. Morgan also fails to disclose or suggest a method comprising providing a status assessment received from a portable defibrillator to a remote monitoring service via a point-of-presence of a two-way communication network and a data network, as required by independent claim 94 as amended. Further, Morgan fails to disclose or suggest a point-of-presence for a two-way communication network that receives a communication that includes a status assessment from a portable defibrillator, and provides the status assessment to a remote monitoring service via a data network, as required by independent claim 104 as amended.

In the Office Action, the Examiner acknowledged that these features of Applicant's independent claims are not disclosed or suggested by Morgan. Nonetheless, the Examiner concluded that it would have been obvious to one having ordinary skill in the art at the time of Applicant's invention to modify the system described by Morgan to include a point-of-presence and data network because such features are well known in the art. Applicant respectfully disagrees with this conclusion.

Even if it was known to those of ordinary skill in the art at the time of Applicant's invention to provide a point-of-presence and a data network for communication between a medical device and a remote location, this knowledge and the Morgan disclosure would not lead such a person to modify Morgan to arrive at Applicant's claimed invention. Applicant's independent claims do not merely recite communication via a point-of-presence and a data network. Instead, as an example, amended claim 1 recites a two-way communication network that includes a point-of-presence, receives a communication from a remote monitoring service via the point-of-presence and a data network, sends a communication to a portable defibrillator in response to receiving the communication from the remote monitoring service, receives a return communication including a status assessment from the portable defibrillator, and provides the status assessment to the remote monitoring service via the data network.

Further, the features recited by Applicant's independent claims, and not taught by Morgan, do not appear to be well known in the art. The Examiner has cited no teaching of these features within the other identified references, or elsewhere within the prior art. Rockwell (U.S. Patent No. 6,141,584), the only reference that was identified by the Examiner other than Morgan



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that is related to portable defibrillators, does not appear to disclose or suggest these requirements of Applicant's independent claims. Instead, the teaching of communication between a defibrillator and a remote location in Rockwell appears to be limited to transmission of live ECG records. In other words, as an example, Rockwell would not even suggest a two-way communication network that provides a status assessment from a portable defibrillator to a remote monitoring service via a data network to one of ordinary skill in the art at the time of Applicant's invention.

As another example, claims 5, 88, 97 and 107 recite the systems and method of the independent claims discussed above, and further require that the two-way communication network include a two-way paging network. Morgan fails to disclose or suggest this feature of Applicant's claims, as acknowledged by the Examiner. Nonetheless, the Examiner concluded that it would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to modify system described by Morgan to include a two-way paging network. The Examiner appears to base this conclusion solely on the assertion that a two-way paging network is known as a type of communication network.

However, the Examiner has cited no teaching within the prior art of use of a two-way paging system for communication between a portable defibrillator, or any medical device, and a remote monitoring system, much less any teaching indicating that use of a two-way paging system in this context was well known. The mere fact that two-way paging systems existed at the time of the invention does not itself provide evidence of a motivation to modify the system described Morgan to include such a network, or any indication as to whether those skilled in the reasonably expect such a modification to successful. Indeed, upon reading the Morgan disclosure, one of ordinary skill in the art at the time of the invention would recognize that use of a two-way paging network as the communication link between a defibrillator communicator and communication station as described by Morgan would frustrate the ability of such devices to exchange data, such as ECG data, in real time during a medical emergency as taught by Morgan. Consequently, one of ordinary skill would consciously avoid the modification to the Morgan system proposed by the Examiner, and would clearly not find such a modification to be obvious.



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For at least these reasons, the Examiner has failed to establish a prima facie case for non-patentability of Applicant's pending claims 1, 3-9 and 80-85, 87-94, 96-104 and 106-111 under 35 U.S.C. 103(a). Withdrawal of these rejections is requested.

## CONCLUSION

All claims in this application are in condition for allowance. Applicant respectfully requests reconsideration and prompt allowance of all pending claims. Please charge any additional fees or credit any overpayment to deposit account number 50-1778. The Examiner is invited to telephone the below-signed attorney to discuss this application.

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